

Message Text

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ACTION L-03

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FM AMEMBASSY SEOUL

TO SECSTATE WASHDC 2810

C O N F I D E N T I A L SEOUL 1591

E.O. 11652: GDS

TAGS: PINT KS

SUBJECT: TRIALS UNDER EMERGENCY MEASURES

REF: STATE 047351

1. WITH REGARD TO SPECIFIC QUESTIONS REFTEL,
FOLLOWING ARE EMBASSY COMMENTS.

2. CONDUCT OF TRIALS. PROCEDURES ARE PRESCRIBED
BY EMERGENCY MEASURE NO. 2 (SEOUL 121), COURT-
MARTIAL LAW AND ROK CRIMINAL CODE. DEFENDANT MAY
SELECT HIS OWN LAWYER. TRIALS ARE NOT OPEN TO
PUBLIC. GOVERNMENT HAS EXCLUDED ON SECURITY
GROUNDS OBSERVERS OTHER THAN FAMILY OF ACCUSED AND
REPORTERS ACCREDITED TO DEFENSE MINISTRY. PRESS HAS
NOT BEEN ALLOWED TO CARRY ANYTHING OTHER THAN
OFFICIAL RELEASES, AND THESE HAVE BECOME LESS
INFORMATIVE. TO BEST OUR KNOWLEDGE COURT-MARTIAL
FORMS ARE BEING OBSERVED, BUT WE NOTE THAT PATTERN
FOLLOWED IS TRIAL ONE DAY AND SENTENCE THE NEXT.

3. APPEAL. EMERGENCY MEASURE NO. 2 PROVIDES FOR
GENERAL EMERGENCY COURTS-MARTIAL AND APPELLATE
EMERGENCY COURTS-MARTIAL. AS EMBASSY HAS
REPORTED, APPELLATE COURT-MARTIAL SYSTEM HAS BEEN
FUNCTIONING (SEOUL 1423, 1479). SRTICEL 108 OF
ROK CONSTITUTION GIVES SUPREME COURT FINAL
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APPELLATE JURISDICTION IN COURT-MARTIAL CASES.

REVIEWING OFFICER (MINISTER OF DEFENSE) HAS SEVEN DAYS IN WHICH TO CONFIRM OR COMMUTE SENTENCE DEFENDANT HAS SEVEN DAYS AFTER REVIEW IN WHICH TO FILE APPEAL TO SUPREME COURT. FOR INSTANCE, CHANG CHUN-HA, WHOSE CONVICTION WAS UPHELD MARCH 2 BY APPELLATE COURT-MARTIAL HAS UNTIL MARCH 16 TO APPEAL TO SUPREME COURT.

4. AS DEPARTMENT IS AWARE EMERGENCY MEASURES ARE POLITICAL AND COERCIVE IN NATURE. COURT-MARTIAL SYSTEM WAS SET UP TO ENSURE THAT THOSE CHARGED WOULD BE DEALT WITH EXPEDITIOUSLY AND IN A FASHION RESPONSIVE TO GOVERNMENT'S WISHES. GIVEN THE POLITICAL CHARACTER OF EMERGENCY MEASURES, ONE CANNOT VERY WELL ASSESS THEIR "FAIRNESS". THOSE CHARGED APPEAR TO HAVE VIOLATED THE MEASURES AND SENTENCES HAVE BEEN HEAVY. IN THIS SITUATION, EMBASSY DOES NOT BELIEVE THAT WE SHOULD BECOME HEAVILY ENGAGED IN EXPLAINING EMERGENCY MEASURES OR CONDUCT OF COURTS-MARTIAL. THIS IS A JOB FOR THE ROKG TO DO. WE HAVE TAKEN LINE HERE THAT EMERGENCY MEASURES ARE INTERNAL ACTIONS TAKEN BY ROKG WITHOUT REFERENCE TO US. BELIEVE IT DIFFICULT TO GO BEYOND THIS WITHOUT APPEARING TO ACCEPT RESPONSIBILITY FOR ROKG ACTIONS.
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